

13. INDEMNIFICATION.

13.1 Indemnification by Seller. Seller shall indemnify and hold harmless Buyer, its subsidiaries, Affiliates and assigns, and its and their respective officers, directors, principals, attorneys, agents, employees or other representatives (collectively, "Buyer Indemnified Parties") from and against any and all obligations, judgments, liabilities, penalties, violations, fees, fines, claims, losses, costs (including court costs and costs of appeal), demands, damages, liens, encumbrances, expenses (including reasonable attorneys' fees), and amounts paid in settlement (collectively, "Damages") that such Buyer Indemnified Party incurs as a result of, or with respect to (i) any inaccuracy in any of the representations or warranties made by Seller in this Agreement (including in the Employee Benefit Plans Supplement), (ii) any material breach or non-fulfillment of any covenants or other agreements made by Seller in this Agreement (including Section 12.11 and the Employee Benefit Plans Supplement) and (iii) any of the Excluded Liabilities. For purposes of Section 13.1(ii), with respect to subsections (e), (h), (k) and (m) of Section 8.2, the phrase "commercially reasonable efforts" shall be disregarded. For purposes of this Section 13.1, the words "material," "materiality," "Material Adverse Effect" and similar terms or phrases which modify or qualify any representation, warranty or covenant shall be disregarded.

13.2 Indemnification by Buyer. In addition to and not in limitation of any indemnifications or other responsibilities of Buyer under Article 3, Buyer shall indemnify and hold harmless Seller, its subsidiaries, Affiliates and assigns, and its and their respective officers, directors, principals, attorneys, agents employees or other representatives (collectively, "Seller Indemnified Parties") from and against any and all Damages (as defined in Section 13.1 above) that such Seller Indemnified Party incurs as a result of, or with respect to (i) any inaccuracy in any of the representations or warranties made by Buyer in this Agreement, (ii) any material breach or non-fulfillment of any covenants or other agreements made by Buyer in this Agreement (including the Post Closing Operating Covenants contained in Article 5), (iii) any of the Assumed Liabilities and (iv) the use, operation or ownership of any of the Facilities and Purchased Assets after the Closing.

13.3 Limitation.

(a) The respective liability of Seller (on the one hand) and Buyer (on the other) for indemnification under Section 13.1(i) or 13.2(i), as the case may be, shall be limited to an amount equal to the Purchase Price.

(b) Neither Seller nor Buyer shall be required to make any indemnification payment pursuant to Section 13.1(i) or 13.2(i), respectively, unless the aggregate of all amounts for which indemnity would be payable by such party exceeds Twenty Million Dollars (\$20,000,000), and in such event, such party shall be responsible for only the amount in excess of Twenty Million Dollars (\$20,000,000). The foregoing limitation shall not apply to breaches of the representations and warranties set forth in Sections 6.1, 6.2, 6.3 and 6.4, and this limitation does not apply to any indemnification required under Sections 13.1(ii), 13.1(iii), 13.2(ii), 13.2(iii) and 13.2(iv). If an action taken or omitted to be taken by Seller or any System Entity prior to the Closing both (x) is an unintentional, non-willful violation of either Section 8.2 or 8.3, and (y) causes a representation and warranty of Seller to be inaccurate at of the Closing,

then, for purposes of this **Section 13.3(b)**, **Section 13.1(i)** shall be considered the only applicable section. Moreover, in the event that a claim for indemnification may be brought under more than one provision of this Agreement, the party seeking indemnification may elect the provision or provisions under which it seeks to be indemnified.

(c) The amount of any Damages (as defined in **Section 13.1** above), that may be imposed on or otherwise incurred or suffered by Buyer or Seller, as applicable (the "Party Losses"), shall be reduced or reimbursed, as the case may be, by any amount received by the Buyer Indemnified Parties or the Seller Indemnified Parties, as applicable, with respect thereto under any insurance coverage or from any other party alleged to be responsible therefor. Buyer Indemnified Parties and Seller Indemnified Parties, as applicable, shall use commercially reasonable efforts to collect any amounts available under such insurance coverage and from such other party alleged to have responsibility. If a Buyer Indemnified Party or Seller Indemnified Party, as applicable, receives an amount under insurance coverage or from such other party with respect to Party Losses at any time subsequent to any indemnification provided by Seller pursuant to **Section 13.1** or by Buyer pursuant to **Section 13.2**, then such Buyer Indemnified Party or Seller Indemnified Party, as applicable, shall promptly reimburse Seller or Buyer, as applicable, for any payment made or expense incurred by Seller or Buyer, as applicable, in connection with providing such indemnification up to such amount received by the Buyer Indemnified Party or a Seller Indemnified Party, as applicable.

(d) Any Individual Matter involving Party Losses of less than \$25,000 based on **Section 13.1(i)** and **Section 13.2(i)**, respectively, shall not be indemnifiable. An "Individual Matter" will include (i) a collection or series of similar items and (ii) all items derived from the same act, circumstance, condition or event; and Party Losses from any Individual Matter involving such a collection or series, or such related items, shall be aggregated in determining whether such \$25,000 threshold has been achieved. For example, 26 instances of billing a service at \$1,000 in excess of permissible reimbursement because of an error in coding would exceed the \$25,000 threshold.

(e) Except in the case of fraud or intentional misconduct, no individual director, officer, employee, agent or other representative of any party or of any Affiliate of any party (including Ponder & Co., Merrill Lynch & Co., legal counsel and accountants for any party and their respective directors, officers, employees and agents) shall have any personal liability to the other party for any matter associated with (i) this Agreement, (ii) compliance with any representation, warranty, term, covenant or condition of Seller set forth in this Agreement or any of its schedules, or (iii) the sale to Buyer of the Purchased Assets pursuant hereto.

13.4 Notice and Control of Litigation.

(a) If any claim or liability is asserted in writing against a Person entitled to indemnification under this **Article 13** (the "Indemnified Party") which would give rise to a claim under this **Article 13**, the Indemnified Party shall notify the Person giving the indemnity ("Indemnifying Party") in writing of the same within ten (10) days after receipt of such written assertion of a claim or liability. The Indemnifying Party shall have the right to defend any such claim, select the counsel (which shall be reasonably acceptable to the Indemnified Party) and control the defense and prosecution of any litigation; provided, however, that the failure to

provide such notice as so indicated shall not affect the Indemnifying Party's obligation to indemnify and the Indemnifying Party shall have no remedy by reason of such failure except to the extent of any actual prejudice resulting from such delay. No such claim may be compromised or settled without the consent of the Indemnified Party, which consent shall not be unreasonably withheld. Notwithstanding anything herein to the contrary, if there is a reasonable probability that a claim may materially and adversely affect the Indemnified Party (because money damages or other money payments may not be an adequate remedy or because money damages or payments may be substantial or are not likely to be collectible from the Indemnifying Party), the Indemnified Party shall have the right, at its own cost and expense, to defend, compromise and settle such claim. If the Indemnifying Party, within twenty (20) days after notice of such claim, fails to defend such claim, the Indemnified Party will (upon further notice to the Indemnifying Party) have the right to undertake the defense, compromise or settlement of such claim on behalf of and for the account and risk of the Indemnifying Party; provided however that such claim shall not be compromised or settled without the consent of the Indemnifying Party, which consent shall not be unreasonably withheld.

(b) The Indemnified Party shall cooperate in all reasonable respects with the Indemnifying Party in the investigation, trial and defense of any lawsuit or action that may be subject to this Article 13 and any appeal arising therefrom; provided however that the Indemnified Party may, at its own cost, participate in the investigation, trial and defense of such lawsuit or action and any appeal arising therefrom, except that, if the Indemnified Party reasonably concludes that the Indemnifying Party and the Indemnified Party have a conflict of interest with different defenses available with respect to such claim, the reasonable fees and expenses of counsel for the Indemnified Party will be considered Damages for purposes of this Agreement. The parties shall cooperate with each other in investigating, trying or defending any lawsuit or action that may be subject to this Article 13, as well as in any notifications to insurers. Seller shall also cause its counsel to cooperate with Buyer and its counsel with respect to any litigation or actions that constitute Purchased Assets or Assumed Liabilities, and Seller shall waive any attorney client privileges in connection therewith.

(c) Following indemnification as provided for hereunder, the Indemnifying Party shall be subrogated to all rights of the Indemnified Party with respect to all Persons relating to the matter for which indemnification has been made.

13.5 Survival. The representations and warranties contained in or made pursuant to this Agreement shall survive the Closing until two years after the Closing, other than those set forth in Section 6.1, 6.2, 6.3 and 6.4, which shall survive indefinitely, Sections 6.7, 6.8, 6.16 and in the Employee Benefit Plans Supplement, which shall survive until the expiration of the statute of limitations, and Section 6.17, which shall survive until the expiration of the statute of limitations, including any period tolled or extended by virtue of the application of the discovery rule (such time period, with respect to any representation, the applicable "Survival Period"). Any matter as to which a claim has been asserted that is pending and unresolved at the end of the applicable Survival Period shall continue to be covered by this Article 13 notwithstanding an applicable Survival Period until such matter is finally determined or otherwise resolved by the parties under this Agreement or by a court of competent jurisdiction and any amounts payable hereunder are finally determined and paid. Except as noted above, the parties intend to shorten the statute of limitations as described above and agree that no claims or causes of action may be

brought against Seller or Buyer based upon, directly or indirectly, any of the representations, warranties or agreements contained in Articles 6, 7 and 8 hereof after the expiration of the Survival Period. This Section 13.5 shall not limit any covenant or agreement of the parties which contemplates performance after the Closing, including Sections 8.7, 13.1(ii), 13.1(iii), 13.2(ii), 13.2(iii) and 13.2(iv).

13.6 Exclusive Remedy. The representations and warranties contained in or made pursuant to this Agreement shall be terminated and extinguished upon the end of the Survival Period (except as provided in Section 13.5 above). Thereafter, except in the case of fraud or intentional misconduct, none of Seller, Buyer or any shareholder, partner, member, officer, director, principal or Affiliate of any of the preceding shall be subject to any liability of any nature whatsoever with respect to any such representation or warranty. Moreover, except in the case of fraud or intentional misconduct, the sole and exclusive remedy for any breach or inaccuracy, or alleged breach or inaccuracy, of any representation and warranty made by Seller, Buyer or any other Person whatsoever shall be the remedies provided by this Article 13. Further, except in the case of fraud or intentional misconduct, the sole and exclusive remedies for breach of any other term, covenant or condition of Seller or Buyer or any other Person under this Agreement shall be the remedies provided by this Article 13 or by other specific provision of this Agreement (e.g., Section 3.3) and no party shall have a right of rescission or unwinding of the transactions after the Closing.

13.7 Right to Indemnification Not Affected by Knowledge. The right to indemnification, payment of Damages or any other remedy based on the representations, warranties, covenants and agreements in this Agreement will not be affected or deemed waived by any investigation conducted with respect to, or any knowledge acquired (or capable of being acquired), at any time, whether before or after the execution and delivery of this Agreement.

14. GENERAL.

14.1 Consents, Approvals and Discretion. Except as herein expressly provided to the contrary herein, whenever this Agreement requires any consent or approval to be given by either party or either party must or may exercise discretion, the parties agree that such consent or approval shall not be unreasonably withheld or delayed and such discretion shall be reasonably exercised.

14.2 Choice of Law; Arbitration.

(a) The parties agree that this Agreement shall be governed by and construed in accordance with the laws of the State of Missouri, without giving effect to any choice or conflict of law provision or rule thereof.

(b) Except as specifically provided for elsewhere in this Agreement, all claims and controversies arising out of or in connection with this Agreement (including claims of any nature such as contract, tort, property or statutory claims, the allegations of which include the existence of, or any effect of, this Agreement) shall be subject to binding arbitration by a single arbitrator in accordance with the commercial arbitration rules of the American Arbitration Association ("AAA"), the existing Rules of Practice and Procedures of the Judicial Arbitration

and Mediation Services, Inc. ("JAMS") or the existing rules of arbitration of the American Health Lawyers Association ("AHLA") Alternative Dispute Resolution Service. Any arbitration shall occur in Kansas City, Missouri, and any judgment on the award rendered in such arbitration shall be entered in any Missouri state or federal court having jurisdiction. The party filing the arbitration shall have the right to select either AAA, JAMS or AHLA. The prevailing party in any arbitration proceeding hereunder as determined by the arbitrator or in any legal proceedings or actions arising from or in connection with this Agreement shall be entitled to recover reasonable attorneys' fees and costs. Nothing herein shall prohibit a party from seeking equitable relief in a court of law to maintain the status quo while an arbitration is pending hereunder. The parties agree that the arbitrator shall not have the right to award punitive damages.

14.3 Benefit; Assignment. Subject to provisions herein to the contrary, this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective legal representatives, successors and assigns; provided, however, that no party may assign this Agreement without the prior written consent of the other party, which consent may be withheld in the sole discretion of the other party. The Section 14.1 requirement of reasonableness does not apply to the granting or withholding of consent to assignment of this Agreement. In addition, any transferee of funds of Seller or its successors and assigns (and any Person to whom any portion of the Purchase Price hereunder is paid) shall become obligated hereunder in the same manner as Seller and shall execute any agreements or other documentation to effect such obligation as Buyer may reasonably request. Notwithstanding the foregoing, Buyer may assign its interest in this Agreement (in whole or in part) to one or more Affiliates without the consent of Seller, but in such event Buyer shall be required to remain obligated hereunder in the same manner as if such assignment had not been effected.

14.4 Effective Date. The Closing of the transactions contemplated hereby shall be effective for accounting and other purposes as of 12:01 a.m. on the Closing Date, unless otherwise agreed in writing by Seller and Buyer. The parties will use commercially reasonable efforts to cause the Closing to be effective as of a month end, with equitable adjustments made to the Purchase Price necessary to give effect to the foregoing.

14.5 No Brokerage. Seller and Buyer represent to each other that no broker has in any way been contracted in connection with the transactions contemplated hereby. Each of Seller and Buyer agrees to indemnify the other party from and against all loss, cost, damage or expense arising out of claims for fees or commissions of brokers employed or alleged to have been employed by such indemnifying party. Seller has engaged the investment banking services of Ponder & Co. to advise Seller with respect to the transactions which are the subject of this Agreement. Seller will be responsible for all charges payable to Ponder & Co. arising out of such engagement. Buyer has engaged the investment banking services of Merrill Lynch & Co. to advise Buyer with respect to the transactions which are the subject of this Agreement. Buyer will be responsible for all charges payable to Merrill Lynch & Co. arising out of such engagement.

14.6 Cost of Transaction. Whether or not the transactions contemplated hereby shall be consummated and except as otherwise provided herein, the parties agree as follows: (i) Seller will pay the fees, expenses, and disbursements of Seller and its agents, representatives,

accountants, and counsel incurred in connection with the subject matter hereof and any amendment hereto and shall pay half of any and all recording fees and sales or recording taxes incurred in connection with the transfer and conveyance of the Purchased Assets to Buyer; and (ii) Buyer shall pay the fees, expenses and disbursements of Buyer and its agents, representatives, accountants and counsel incurred in connection with the subject matter hereof and any amendments hereto and shall pay half of any and all recording fees and sales or recording taxes incurred in connection with the transfer and conveyance of the Purchased Assets to Buyer. Buyer and Seller shall each pay one-half of the fees and expenses of legal counsel hired by the Attorney General of Missouri and by the Attorney General of Kansas in connection with the review and approval process of the Attorney Generals required in connection with the transactions contemplated by this Agreement.

14.7 Public Announcements Confidentiality.

(a) This Agreement and the terms hereof shall be kept confidential in accordance with Section 14.7(b) except as may, in the reasonable judgment of any party hereto, be required by any applicable Law, including any federal securities laws. If any party hereto concludes that disclosure is required, it shall provide each other party with a reasonable opportunity to discuss the nature of the requirement and to review the disclosure before it is made. The party making the disclosure shall have the right to make the disclosure in a manner satisfactory in terms and in substance to such party in its sole and absolute discretion to the extent it has been advised by its counsel that such form and content of the disclosure is required. Each party hereto shall not otherwise disclose to any Person the nature or progress of the transactions contemplated pursuant to this Agreement or the contents of any information provided to such party in anticipation of such transactions.

(b) It is understood by the parties hereto that the information, documents and instruments delivered to Buyer by Seller or Seller's agents and the information, documents and instruments delivered to Seller by Buyer or Buyer's agents are of a confidential and proprietary nature. Each of the parties hereto agrees that both prior and subsequent to Closing they will maintain the confidentiality of all such confidential information, documents or instruments delivered to them by each of the other parties hereto or their agents in connection with the negotiation of this Agreement or in compliance with the terms, conditions and covenants hereof and only disclose such information, documents and instruments to their duly authorized officers, directors, representatives and agents. Each of the parties hereto further agrees that if the transactions contemplated hereby are not consummated, they will return all such documents and instruments and all copies thereof in their possession to the other party to this Agreement. Each of the parties hereto recognizes that any breach of this Section would result in irreparable harm to the other parties to this Agreement and their Affiliates and that therefore either Seller or Buyer shall be entitled to an injunction to prohibit any such breach or anticipated breach, without the necessity of posting a bond, cash or otherwise, in addition to all of their other legal and equitable remedies. Nothing in this Section, however, shall prohibit the use of such confidential information, documents or information for such governmental filings as in the mutual opinion of Buyer's counsel and Seller's counsel are (i) required by law or governmental regulations or (ii) otherwise appropriate (including, without limitation, Seller's private letter ruling application).

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14.8 Waiver of Breach. The waiver by either party of breach or violation of any provision of this Agreement shall not operate as, or be construed to constitute, a waiver of any subsequent breach of the same or other provision hereof.

14.9 Notice. Any notice, demand or communication required, permitted, or desired to be given hereunder shall be deemed effectively given when personally delivered, when received by telegraphic or other electronic means (including telecopy and telex) or overnight courier, or five (5) days after being deposited in the United States mail, with postage prepaid thereon, certified or registered mail, return receipt requested, addressed as follows:

Seller: Health Midwest
Attn: Richard W. Brown,
President & Chief Executive Officer
2304 E. Meyer Blvd., Suite A-20
Kansas City, Missouri 64132
Facsimile: (816) 276-9320

with copies to: Health Midwest
Attn: Joseph L. Hiersteiner
EVP & General Counsel
2304 E. Meyer Blvd, Suite A-20
Kansas City, Missouri 64132
Facsimile: (816) 276-9320

Seigfreid, Bingham, Levy, Selzer & Gee, P.C.
2800 Commerce Tower
911 Main Street
Kansas City, Missouri 64105
Attention: Larry J. Bingham
Facsimile: (816) 474-3447

Buyer: HCA Inc.
One Park Plaza
Nashville, Tennessee 37203
Attention: Senior Vice President – Development
Facsimile: (615) 344-2324

with copies to: HCA Inc.
One Park Plaza
Nashville, Tennessee 37203
Attention: General Counsel
Facsimile: (615) 344-1531

O'Melveny & Myers LLP
1650 Tysons Boulevard, Suite 1150
McLean, Virginia 22102
Attention: David G. Pommerening
Facsimile: (703) 918-2704

or to such other address, and to the attention of such other person or officer as any party may designate.

14.10 Severability. In the event any provision of this Agreement is held to be invalid, illegal or unenforceable for any reason and in any respect, such invalidity, illegality, or unenforceability shall in no event affect, prejudice or disturb the validity of the remainder of this Agreement, unless doing so would result in an interpretation of this Agreement that is manifestly unjust.

14.11 Inferences. Inasmuch as this Agreement is the result of negotiations between sophisticated parties of equal bargaining power represented by counsel, no inference in favor of, or against, either party shall be drawn from the fact that any portion of this Agreement has been drafted by or on behalf of such party.

14.12 Divisions and Headings. The divisions of this Agreement into sections and subsections and the use of captions and headings in connection therewith are solely for convenience and shall have no legal effect in construing the provisions of this Agreement.

14.13 No Third Party Beneficiaries. The terms and provisions of this Agreement are intended solely for the benefit of Buyer and Seller and their respective permitted successors or assigns, and it is not the intention of the parties to confer, and this Agreement shall not confer, third-party beneficiary rights upon any other Person.

14.14 Tax and Medicare Advice and Reliance. Except as expressly provided in this Agreement, none of the parties (nor any of the parties' respective counsel, accountants or other representatives) has made or is making any representations to any other party (or to any other party's counsel, accountants or other representatives) concerning the consequences of the transactions contemplated hereby under applicable tax laws or under the laws governing the Medicare program. Each party has relied solely upon the tax and Medicare advice of its own employees or of representatives engaged by such party and not on any such advice provided by any other party hereto.

14.15 Entire Agreement; Amendment. This Agreement supersedes all previous contracts and constitutes the entire agreement of whatsoever kind or nature existing between or among the parties representing the within subject matter and no party shall be entitled to benefits other than those specified herein. As between or among the parties, no oral statement or prior written material not specifically incorporated herein shall be of any force and effect. The parties specifically acknowledge that in entering into and executing this Agreement, the parties rely solely upon the representations and agreements contained in this Agreement and no others. All prior representations or agreements, whether written or verbal, not expressly incorporated herein are superseded unless and until made in writing and signed by all parties hereto. This Agreement

may be executed in two or more counterparts, each and all of which shall be deemed an original and all of which together shall constitute but one and the same instrument.

14.16 Specific Performance. The parties acknowledge that the Facilities and the Purchased Assets are unique, that a failure by either party to complete the transactions contemplated by this Agreement will cause irreparable injury to the other party, and that actual damages for any such failure may be difficult to ascertain and may be inadequate. Accordingly, either party shall be entitled to specific performance of any of the provisions of this Agreement in addition to any other equitable remedies to which such party may otherwise be entitled for a failure by the other party to complete the transactions contemplated by this Agreement.

14.17 Employee Benefit Plans Supplement. Should any specific provision of the Employee Benefit Plans Supplement be in conflict with a more general provision of the Agreement that does not specifically refer to Employee Benefit Plans, the specific provision of the Employee Benefit Plans Supplement shall control.

14.18 Guaranty. Guarantor hereby unconditionally and absolutely guarantees the prompt performance and observation of Buyer for each and every obligation, covenant and agreement of Buyer arising out of, connected with, or related to, this Agreement or any ancillary documents hereto and any extension, renewal and/or modification thereof. The obligation of Guarantor under this Section 14.18 is a continuing guaranty and shall remain in effect, and the obligations of Guarantor shall not be affected, modified or impaired upon the happening from time to time of any of the following events, whether or not with notice or consent of Guarantor:

(a) The compromise, settlement, release, change, modification, amendment (except to the extent of such compromise, settlement, release, change, modification or amendment) of any or all of the obligations, duties, covenants, or agreements of any party under this Agreement or any ancillary documents hereto; or

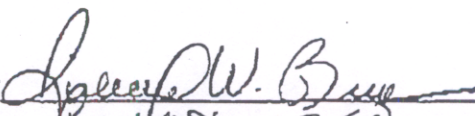
(b) The extension of the time for performance or payment of money pursuant to this Agreement, or of the time for performance of any other obligations, covenants or agreements under or arising out of this Agreement or any ancillary documents hereto or the extension or the renewal thereof.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in multiple originals by their authorized officers, all as of the date and year first above written.

THIS AGREEMENT CONTAINS A BINDING ARBITRATION CLAUSE THAT IS ENFORCEABLE AGAINST THE PARTIES.

SELLER:
HEALTH MIDWEST

By: 
Title: President & CEO

BUYER:
HM ACQUISITION LLC

By: Healthtrust, Inc. – The Hospital Company
Its: Sole Member

By: _____
Title: _____

GUARANTOR (solely for the purpose of the provisions of Section 14.18):
HCA INC.

By: _____
Title: _____

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THIS AGREEMENT CONTAINS A BINDING ARBITRATION CLAUSE THAT IS ENFORCEABLE AGAINST THE PARTIES.

SELLER:
HEALTH MIDWEST

By: _____
Title: _____

BUYER:
HM ACQUISITION LLC

By: Healthtrust, Inc. - The Hospital Company
Its: Sole Member

By: Jack O. Bowerman, Jr.
Title: _____

GUARANTOR (solely for the purpose of the provisions of Section 14.18):
HCA INC.

By: Jack O. Bowerman, Jr.
Title: _____